

I pass my award regarding the dispute in hand accordingly.

The 27th April, 1985.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

Endorsement No. 1377, dated Ambala City, the 30th May, 1985.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

No. 9/5/84-Lab./5161.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of dispute between the workman and management of M/s. Cage Engineering Works, G. T. Road, Panipat.

IN THE COURT OF SHRI V. P. CHAUDHARY,
PRESIDING OFFICER, LABOUR COURT,
AMBALA (HARYANA).

Reference No. 267 of 1984

(Old No. 68 of 1980)

SHRI HARNAM SINGH WORKMAN AND THE
MANAGEMENT OF MESSRS CAGE ENGINEERING WORKS, G.T. ROAD, PANIPAT.

Present:

Shri Harish Baggi, for workman.

Shri Surinder Kaushal, for respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of the powers conferred by clause (c) of sub-section (i) of Section 10 of the Industrial Disputes Act, 1947 referred the dispute between Shri Harnam Singh workman and the management of M/s. Cage Engineering Works, G.T. Road, Panipat, to Labour Court, Faridabad. The terms of reference are as under:

"Whether the termination of services of Shri Harnam Singh workman was justified and in order? If not to what relief is he entitled to?"

On constitution of Labour Court at Ambala reference was received by transfer. Notices were issued to the parties. Parties were served and appeared.

Workman Harnam Singh alleged that he joined the services of the respondent management in the year 1977. On 3rd January, 1979. His services were terminated illegally and in an arbitrary manner in contravention of section 25(F) of the Industrial Disputes Act, 1947. He has prayed for re-instatement with continuity in service and with full back wages.

Respondent controverted the allegations of workman and contended that workman was in the service of respondent. On 3rd January, 1979, he was detected for having prepared patterns for out siders. At that time his explanation was called for. He indulged in mis-conduct, filthy languages and mis-behaviour with the Chief Engineer of respondent management who detected him. A charge-sheet was served upon to him which he never honoured. An Enquiry Officer was appointed who issued 3 notices to workman to join the inquiry proceedings but he refused. Thereafter he was served through publication (in Dainik Tribune) but in spite of, service he did not appear. Ex parte proceedings were taken up against him. The Inquiry Officer submitted ex party enquiry report against the workman holding him guilty of misconduct for having prepared patterns for out siders and for having supplied patterns of respondent-management to out siders in lieu of consideration. Thereafter, show cause notice was issued to him by the management with the Inquiry report which the workman refused to accept which resulted the termination of services of workman on 24th July, 1979.

On the pleadings of the parties the following issues were framed by my learned predecessor for the just decision of this case:

ISSUE NO. I:

Whether the workman had got any cause of action on 3rd January, 1979?

ISSUE NO II:

Whether the domestic enquiry held against the workman is fair and proper and in accordance with the principles of natural justice.

ISSUE NO. III:

Whether the termination of services of Shri Harnam Singh workman was justified and in order? if not to what relief is he entitled to?

I have heard authorised representatives of the parties and have gone through the evidence available on the file. My issuewise findings are as under:

ISSUE NO. I

In support of this issue I would like to refer evidence of MW-I Jagdish Lal, Head Clerk, O/O Labour Officer-cum-Conciliation Officer, Panipat. MW-2 Shri Ganesh Dass, Postman as well as publication in Dainik Tribune dated 25th May, 1979. Exhibit MW-III/5. The above evidence and publication has been denied by the workman, but the mere denial carries no weight and does not stand in the eyes of law. The evidence of the management gives the clear picture of the workman Shri Harnam Singh that he supplied patterns of the management to the outsiders in lieu of consideration when charge-sheet was served upon to him. He refused to receive it. This factum finds support from the statement of MW-I and MW-II. In spite of this service through publication as mentioned above he did not bother to appear before the management, which resulted in the termination of his service.

I would also like to mention here that workman Harnam Singh even did not appear before the Conciliation Officer when he served demand notice to the management. Ultimately his demand notice was filed by the Labour Officer-cum-Conciliation Officer. He even did not join in enquiry proceedings, in spite of the fact that three registered notices were issued to him which were taken by MW-II and workman refused service of the same.

The above picture of conduct and behaviour of Shri Harnam Singh workman clearly shows that he has got no cause of action against the management, so this issue is decided against the workman and in favour of the management.

ISSUE NO. II & III:

Issue No. II & III both are taken together for findings.

Again I would like to refer to the statement of Shri Jagdish Lal MW-I who stated that demand notice dated 3rd January, 1979 was received by the management. Copy of the same in Exhibit MW-1/1. Notices were issued to workman for 30th January, 1979, 20th February,

1979. At that time the management expressed the conduct of the workman. Ultimately inquiry proceedings were taken up against the workman. The Inquiry Officer issued notices to workman Harnam Singh which were taken up by Shri Ganesh Dass Postman to Harnam Singh but he refused to accept the notices as stated by MW-II thereafter notices were also issued through the union of employees but no fruitful result came out. Workman Harnam Singh remained absent. The Inquiry Officer proceeded ex-parte and submitted ex-parte report against the workman.

On the contrary Shri Harnam Singh workman examined himself as MW-III. Satvir Singh MW-II. WW-I is Mange Ram S/o Shri Roshan Lal. They stated that Harnam Singh was never served. He never mis-behaved with the Chief Engineer. In fact his services were terminated since he was all in all of the Union activities in the factory.

The above statements of the workman witnesses dash to the grounds when he failed to reply the Charge-sheet, join the enquiry proceedings; refused to accept show cause notice which resulted in the termination of services. The Postman MW-II is a most important witness he has got no enmity against the workman. There is no question of making false statement and the other witnesses have also made statement on oath. They cannot be dis-believed. There is nothing on the file to make their testimony doubtful.

In view of my above discussions I am of the opinion that workman was found committing mis-conduct, red-handed while preparing and supplying patterns of the management to outsiders. Moreover his conduct is also very undesirable that he avoided service of Charge-sheet failed to appear before Inquiry Officer and did not join inquiry proceedings; and did not receive show cause notice which shows that domestic enquiry was properly and fairly held. Workman was found guilty of mis-conduct. Termination order regarding the services of workman dated 23rd July, 1979 is just and accordance with law, so both these issues are decided, in favour of the respondent management and against the workman.

I pass my award regarding the dispute in hand accordingly.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

The 27th April, 1985

Endorsement No. 1378, dated Ambala City, the 30th May, 1985.

Forwarded (Four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

The 1st July, 1985

No. 9/5/84-61/5329.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s. Haryana Roadways, Rohtak.

BEFORE SHRI B. P. JINDAL, PRESIDING
OFFICER, LABOUR COURT, ROHTAK.

Reference No. 38 of 82.

BETWEEN

SHRI INDER SINGH, WORKMAN AND THE
MANAGEMENT OF M/S. HARYANA ROAD-
WAYS, ROHTAK.

Shri S.N. Vats, A.R. for the workman.
Shri S. C. Singla, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub section (1) of section 19 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Inder Singh and the management of M/s. Haryana Roadways Rohtak, to this Court, for adjudication,—vide Labour Department Gazette Notification No. ID/RTK/113/81-6209, dated 5th February, 1982.

Whether the termination of service of Shri Inder Singh was justified and in order? If not, to what relief is he entitled?

2. On receipt of the order of reference, notice were issued to the parties. The parties appeared. The case of the workman is that he was appointed as a Conductor with the management on permanent basis on 9th April, 1974, but

his services were terminated by the respondent on 5th January 1981 unlawfully after holding a force of in enquiry, in which, he was not given an opportunity of participation and furthermore the Enquiry Officer who conducted the enquiry did not afford adequate opportunity to the workman and as such the order of termination based upon the same is not sustainable. So, there is a prayer for reinstatement with continuity of service and full back wages.

3. In the reply filed by the respondent, the claim of the workman has been controverted in toto. The preliminary objections taken are that the services of the workman were terminated after holding a valid and proper enquiry and that the management has since lost confidence in the workman and that earlier Demand Notice of the workman was rejected, but later on his application to the appropriate authority for making the reference was also rejected. On merits, it is alleged that the enquiry held was valid and proper, because statement of witnesses were recorded in the presence of the workman and the workman was given full opportunity of cross-examining the witnesses.

4. On the pleadings of the parties, the following issues were settled for decision on 1st September, 1982:—

1. Whether the enquiry conducted by the management is fair and proper? If so, to what effect?
2. Whether the reference is bad in law for the reasons given in para 3 of the preliminary objection?
3. Whether the termination of services of Shri Inder Singh was justified and in order? If not, to what relief is he entitled?
5. The management examined MW-1 Shri Om Prakash, Assistant, MW-2 Shri Jawala Parshad Sharma, Traffic Manager, Haryana Roadways Faridabad, MW-3 Shri Kuldeep Singh, Traffic Manager, Haryana Roadways, Sirsa, MW-4 Shri Pawan Kumar, Clerk, MW-5 Shri Mohinder Singh, Adda Conductor, Haryana Roadways, Rohtak, MW-6 Shri Sunder Singh, Inspector, Haryana Roadways Bhiwani, MW-7 Shri Balram Kumar, Inspector. The workman examined WW-1 Shri Nafe Singh and himself appeared as WW-2
6. The learned Authorised Representatives of the parties heard. Documents pursued,

7. The learned Authorised Representatives of the parties agreed that this reference can be disposed of on the legal point involved that this reference is bad in law, because the appropriate authority while making the reference to the Court after earlier rejecting the same did not issue any notice of hearing to the management. It is not in dispute that the earlier demand notice of the workman was rejected by the appropriate authority from making a reference to the Court and later on while reviewing its earlier order, no opportunity of hearing was given to the management before making a reference to the Court. In that behalf, statement of M-1 Shri Om Parkash, Assistant, office of the Labour Commissioner, Haryana, Chandigarh, can be referred. He stated on the basis of summoned record that the demand notice was raised by the workman on 22nd June, 1981 and that after conciliation proceedings, the case was sent by the Labour Officer to the Government and the Government refused to make the reference after considering the case and thereafter the workman filed another application dated 11th October, 1981, which was also rejected by the Government on 4th November, 1981 and before that the Government called the comments of the General Manager, Roadways, Rohtak. Thereafter the workman again filed an application dated 4th January, 1982, addressed to the Labour Minister, Haryana. On this application, no opportunity of hearing was given to the management and the reference was made to the Court on 5th February, 1982. In view of the settled factual position, there is no scope for dispute that the reference on the 3rd occasion was made by the Government to the Labour Court without any opportunity of hearing being given to the management. On behalf of the respondent reliance has been placed upon 1983 Lab. I. C. 223 M/s. Escorts Ltd., Faridabad versus Industrial Tribunal, Haryana, Faridabad and others. In this Full Bench authority their Lordships of the Hon'ble High Court of Punjab and Haryana after discussing conflict of judicial opinion on this point, summarised their view in paragraph No. 10 as under :—

"The rule audi alteram partem is attracted to the exercise of power a second time under S. 10(1) of the Act whilst referring the matter for adjudication after the same had been rejected earlier. 1979 Lab. I. C. 44 (Raj.), Dis-sented from. (Case law discussed).

8. Earlier while discussing the various points argued before their Lordships, it was observed as under in paragraph numbers 6 and 7, which can also be quoted with advantage :—

"Section 12 (5) in terms provides that where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefore. It is thus plain that refusal to make a reference where conciliation proceedings have been initiated is required by statute to both clearly record its reasons and to communicate that to the parties. It seems axiomatic that where even an administrative order requires this it would be a factor in favour of the right of the parties to be heard before such a considered order is reversed so as to enable them to bring before the authority all the considerations for supporting or reversing the same."

"It is true that the earlier rejection does not give any vested right to the employer to have the issue finally closed and no considerations of resjudicata can possibly arise in this situation. Nevertheless in view of adverse consequences that may well ensue by referring a dispute which has been earlier rejected, the employer would be entitled to be heard before it is reopened".

9. So, in view of the law laid down in the authority cited above, which has a binding force upon this Court and in the absence of any contrary authority cited on behalf of the workman, there is no escape from the conclusion that the present reference is bad in law and answered accordingly. There is no order as to cost.

Dated: 31st May, 1985.

B. P. JINDAL,
Presiding Officer,
Labour Court,
Rohtak.

Endorsement No. 38-82/878, dated 13th June, 1985

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL
Presiding Officer,
Labour Court,
Rohtak.